

**Report of Maryellen K. Sebold, CPA/CFF, CIRA  
Regarding the Economic Damages Associated  
With the  
Eastern Long Island Solar Project, LLC Ronkonkoma Site**

**In the Matter of EDF Renewable Development, Inc. v. County of Suffolk  
Docket Number: CV-13-3361  
United States District Court  
Eastern District of New York**

**February 9, 2015**



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**I. SUMMARY OF ECONOMIC DAMAGES SUFFERED BY EDF RENEWABLE DEVELOPMENT, INC.**

Due to the alleged breach of contract by Suffolk County, EDF Renewable Development, Inc. (herein “EDF” or the “Company”) suffered economic damages totaling \$11,656,951. These economic damages are described in detail below and are summarized as follows:

|                                  |                     |
|----------------------------------|---------------------|
| Solar Modules                    | \$7,431,416         |
| Steel for Array Foundations      | 2,273,040           |
| Other Out of Pocket Costs        | 886,038             |
| Prejudgment Interest (9% Simple) | 2,144,244           |
| Less: Mitigation                 | <u>(1,077,787)</u>  |
| Total Economic Damages           | <u>\$11,656,951</u> |

**II. SCOPE OF WORK**

I, Maryellen K. Sebold, through my employer BDO USA, LLP (herein “BDO”), have been retained by Blank Rome LLP, on behalf of their client, EDF Renewable Development, Inc. in the matter of EDF Renewable Development, Inc. vs. County of Suffolk, before the United States District Court, Eastern District of New York (Docket Number: CV-13-3361). A copy of the engagement letter is attached hereto as **Exhibit 1**.

I have been asked by counsel to quantify the economic damages, if any, experienced by EDF in connection with the proposed construction of a solar energy system and carport structure at the Long Island Rail Road station in Ronkonkoma, New York.

**III. SUMMARY OF EXPERT QUALIFICATIONS**

I am a Managing Director in the Los Angeles office of BDO Consulting, which provides litigation consulting, forensic accounting and bankruptcy services. BDO Consulting is a division of BDO USA, LLP, a public accounting firm with approximately 50 offices in the United States and approximately 3,300 employees. My experience over the past 28 years has been with national, regional and local public accounting firms. My primary background is in litigation consulting in areas including forensic accounting, damage calculations and analysis, bankruptcy and litigation support, and I have provided forensic accounting services

in various forms of business litigation, including consumer class actions, tracing of funds and investigation into misappropriation of assets. My expert qualifications, including my testimony over the past four years and the publications I have authored over the past ten years, are described in my Curriculum Vitae, attached hereto as **Exhibit 2**.

I am a Certified Public Accountant, licensed and in good standing in the states of California and New York and am a Certified Insolvency and Restructuring Advisor. I also obtained the Certified in Financial Forensics credential from the American Institute of Certified Public Accountants ("AICPA"). I earned a Bachelor of Science degree from Ithaca College. Among other professional organizations, I serve on the AICPA Council and am a member of the California Society of CPAs and serve on its Board. I am a member of the Association of Insolvency and Restructuring Advisors and a past president of the California CPA Education Foundation Board of Trustees.

My firm is being compensated for my time in this matter at an hourly rate of \$595 for work I perform in the course of my analysis. Professionals at my firm working on this matter under my direction and supervision bill their time hourly at rates ranging from \$125 to \$495 per hour. Compensation paid to my firm by EDF, and by my firm to me, is not dependent upon the outcome of this matter.

#### **IV. DOCUMENTS AND INFORMATION RECEIVED**

In connection with this matter, I received documents and information that were considered by me, and those working at my direction, in forming my opinions. A listing of those documents are attached hereto as **Exhibit 4**.

#### **V. KEY ENTITIES, DEFINITIONS, AND CASE BACKGROUND**

##### **A. Key Entities and Definitions**

The following abbreviations used throughout this report refer to the corresponding definitions listed below:

| Abbreviation             | Definition  |
|--------------------------|---|
| EDF                      | EDF Renewable Development, Inc. (plaintiff in this matter). <i>Formerly known as “enXco Development Corp.”</i>  |
| Suffolk County           | County of Suffolk (defendant in this matter).   |
| Long Island Solar        | Eastern Long Island Solar Project, LLC. This entity is a former subsidiary of EDF.  |
| Ronkonkoma               | The railroad station located in Ronkonkoma, New York which was one of seven (7) sites Suffolk County leased to Long Island Solar.                             |
| LIPA                     | Long Island Power Authority   |
| Power Purchase Agreement | The Contract for the Purchase and Sale of Solar Energy, Renewable Energy Certificates and Capacity between LIPA and Long Island Solar dated January 27, 2010. |
| Ronkonkoma Lease         | Lease agreement between Suffolk County and Long Island Solar for the Ronkonkoma Site dated March 22, 2010.  |

## B. Case Background

As detailed more thoroughly in pleadings filed in this matter, this dispute is between EDF and Suffolk County. Long Island Solar, a former subsidiary of EDF, and Suffolk County entered into “seven, separate lease agreements for the installation and operation of solar carport facilities on Suffolk-County owned property.”<sup>1</sup> The seven lease agreements each relate to the installation and operation of solar carport facilities at seven distinct locations. Collectively, the Power Purchase Agreement encompasses the installation and operation at the seven locations.

EDF purchased the raw materials needed for all seven locations and completed the installation of six of the properties. The Ronkonkoma property was expected to have the largest megawatt production, approximately one-third of the production of the seven sites. However, EDF was not able to begin the installation of the solar carport

<sup>1</sup> See Complaint dated June 12, 2013 at ¶1. *EDF Renewable Development, Inc. v. County of Suffolk*, United States District Court, Eastern District of New York, Case No: CV-13-3361 (herein “Complaint” and attached as **Exhibit 3**).

facilities at the Ronkonkoma property. EDF alleges that Suffolk County violated the terms of the Ronkonkoma lease and/or breached its duty of good faith and fair dealing by refusing to allow Long Island Solar to construct solar carports on the site.<sup>2</sup>

EDF incurred out-of-pocket costs for the construction, development, and administration of the Ronkonkoma site. Subsequent to the alleged breach by Suffolk County, EDF also incurred costs to store the solar modules and steel that was no longer going to be used in the Ronkonkoma project. Subsequent to the alleged breach of contract, EDF eventually sold some, but not all, of the raw materials purchased for the Ronkonkoma site. Finally, EDF continues to incur storage costs for the unsold materials.

### C. Summary of Conclusions

1. EDF suffered \$10,590,494 of net economic damages resulting from the alleged breach of contract for the planned construction of the Ronkonkoma site of the Long Island Power Authority project.

The economic damages suffered by EDF in connection with the Ronkonkoma project were out-of-pocket costs incurred for the development, construction, and administration of the Ronkonkoma site. Approximately 91.63% of the out-of-pocket costs were for the purchase of solar modules and steel for array foundations and 8.37% were for other out-of-pocket costs. I categorized these costs, which are described in detail below and are summarized on **Schedule A**.

2. EDF recovered \$1,077,787 of Ronkonkoma's material costs through mitigation efforts subsequent to the alleged breach of the contract.

In connection with the Power Purchase Agreement, EDF purchased solar modules for the Ronkonkoma location that were capable of generating 4,721,180 watts of power.

On September 13, 2012, EDF transferred solar modules capable of generating 904,890 watts of power to a separate internal project. The market price near the

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<sup>2</sup> *Id.*

date of the transfer was \$0.65 per watt, based on a term sheet from Suntech America, Inc. dated November 2, 2012. The transfer resulted in mitigation totaling \$588,179.<sup>3</sup>

At the time of the alleged breach of contract, EDF's on-hand steel inventory cost \$4,410,083. This inventory included steel purchased for the Ronkonkoma location as well as excess steel purchased in connection with all seven locations. On March 20, 2013, Meridian Steel agreed to purchase EDF's entire steel inventory for \$949,958, of which 51.54% had been purchased in connection with Ronkonkoma's construction. Therefore, EDF's mitigation resulting from this sale was \$489,608.<sup>4</sup>

3. Prejudgment interest on EDF's net economic damages for Ronkonkoma is \$2,144,244.

Prejudgment interest was calculated at a 9% annual rate using a simple interest protocol on each of the cost categories described herein. Generally, the interest calculations began on the later of either: (1) the date EDF incurred the cost, or (2) June 15, 2012. By June 15, 2012, Suffolk County had not issued a building permit for Ronkonkoma and had not provided an adequate substitute site for Ronkonkoma so that EDF would be able to complete the installation of the solar carports by the deadline under the Power Purchase Agreement with LIPA. Interest calculations ended on either: (1) the date the cost was mitigated (if applicable), or (2) December 31, 2014.

## **VI. IDENTIFICATION AND QUANTIFICATION OF EDF'S EXPENDITURES MADE IN CONNECTION WITH THE POWER PURCHASE AGREEMENT**

### **A. EDF incurred \$40,461,911 of costs, exclusive of construction costs**

I analyzed invoices provided by EDF and identified \$40,461,911 of costs which are organized into 12 distinct categories as described further below.

<sup>3</sup> 904,890 watts \* \$0.65 = \$588,179

<sup>4</sup> \$949,958 \* 51.54% = \$489,608



## 1. Description of Identified Categories

I identified out-of-pocket expenditures made by EDF in connection with the Power Purchase Agreement in the categories that are described generally below:

As described below, 89.10% of total out-of-pocket expenditures were for the purchase of solar modules and steel for array foundations made in connection with the Power Purchase Agreement.

- a. Solar Modules – these expenditures include the costs of the solar panels that were to be installed at each of the seven sites;
- b. Foundations: Array Foundations – these expenditures include steel purchased for the purpose of constructing carport structures that hold solar modules;

As described below, 10.90% of total out-of-pocket expenditures were incurred for other costs made in connection with the Power Purchase Agreement.

- c. Project Costs Related to Carport Structures – this expenditure is a down payment for the services of Baja Construction Co., Inc. (herein “Baja Construction”);
- d. Storage of Solar Modules – these expenditures included the costs of storing the solar panels that were ultimately installed as well as those panels that were remaining subsequent to the alleged breach;
- e. Storage of Steel – these expenditures included the costs of storing steel that was ultimately used in the six completed projects, as well as the steel that remained subsequent to the alleged breach;
- f. Design & Engineering: Development – these expenses included the engineering and drafting of the plans to construct each of the seven sites;
- g. Legal: Project Development – these expenses included legal fees related to issues including property tax exemptions and project development;
- h. Consulting: Geotechnical Reporting – these expenditures include surveying and mapping services which encompasses research, documents, maps, and title reports;
- i. Consulting: Development Permitting – these expenditures include architectural services for development and optimization;

- j. Lease Prepayment – these expenditures are lease prepayments made to Suffolk County to pay for the first three years;
- k. Transportation of Solar Modules – these expenditures include the movement of solar panels to the installation locations; and
- l. Legal Fees – these expenditures relate to legal services incurred for construction contracts.

## 2. Quantification of Identified Categories

Using the procedures detailed below, I categorized the total expenditures for all seven project sites covered under the Power Purchase Agreement. Each of these categories ultimately includes costs allocable to Ronkonkoma and the total costs for each category are summarized below and presented in detail on **Schedule J**.<sup>5</sup>

|    | Cost Category                               | Amount              | % of Total              |
|----|---|---------------------|-------------------------|
| 1  | Solar Modules                               | \$27,609,721        | 68.24%                  |
| 2  | Foundations: Array Foundations              | 8,442,016           | 20.86%                  |
| 3  | Project Costs Related to Carport Structures | 1,407,003           | 3.48%                   |
| 4  | Storage of Solar Modules                    | 810,456             | 2.00%                   |
| 5  | Storage of Steel                            | 56,630              | 0.14%                   |
| 6  | Design & Engineering: Development           | 1,095,584           | 2.71%                   |
| 7  | Legal: Project Development                  | 373,707             | 0.92%                   |
| 8  | Consulting: Geotechnical Reporting          | 338,754             | 0.84%                   |
| 9  | Consulting: Development Permitting          | 150,260             | 0.37%                   |
| 10 | Lease Pre-Payment                           | 115,213             | 0.28%                   |
| 11 | Transportation of Solar Modules             | 40,374              | 0.10%                   |
| 12 | Legal Fees                                  | 22,193              | 0.05%                   |
|    | <b>Total</b>                                | <b>\$40,461,911</b> | <b>100%<sup>6</sup></b> |

<sup>5</sup> The costs summarized in the table represent the costs from all LIPA invoices provided to me. A listing of all of the invoices and the costs is provided in **Schedule J**.

<sup>6</sup> Due to rounding presentation, the total percentage does not sum to 100%.

### 3. Procedures Followed

EDF provided copies of all invoices in its possession that pertained to the Power Purchase Agreement. I organized the invoices into the 12 categories described above based on the information provided by the document and discussions with EDF. I also verified that the expenditures were made in connection with the Power Purchase Agreement by identifying the project site name on the invoice.

## **VII. EDF INCURRED NET ECONOMIC DAMAGES TOTALLING \$10,590,494 UNDER THE POWER PURCHASE AGREEMENT THAT ARE ALLOCABLE TO RONKONKOMA**

### **A. Summary**

The total economic damages allocable, either directly or through calculations described herein, to the Ronkonkoma project before mitigation efforts were \$10,590,494. This total is summarized in the table below by category, described more fully below, and presented in greater detail in the accompanying schedules.

|           | <b>Cost Category</b>                        | <b>Amount</b>       | <b>% of Total</b>       |
|-----------|---|---------------------|-------------------------|
| <b>1</b>  | Solar Modules                               | \$7,431,416         | 70.17%                  |
| <b>2</b>  | Foundations: Array Foundations              | 2,273,040           | 21.46%                  |
| <b>3</b>  | Project Costs Related to Carport Structures | 451,012             | 4.26%                   |
| <b>4</b>  | Storage of Solar Modules                    | 25,825              | 0.24%                   |
| <b>5</b>  | Storage of Steel                            | 3,654               | 0.03%                   |
| <b>6</b>  | Design & Engineering: Development           | 241,942             | 2.28%                   |
| <b>7</b>  | Legal: Project Development                  | 53,381              | 0.50%                   |
| <b>8</b>  | Consulting: Geotechnical Reporting          | 48,408              | 0.46%                   |
| <b>9</b>  | Consulting: Development Permitting          | 21,472              | 0.20%                   |
| <b>10</b> | Lease Pre-Payment                           | 37,151              | 0.35%                   |
| <b>11</b> | Transportation of Solar Modules             | -                   | -                       |
| <b>12</b> | Legal Fees                                  | 3,193               | 0.03%                   |
|           | <b>Total</b>                                | <b>\$10,590,494</b> | <b>100%<sup>7</sup></b> |

<sup>7</sup> Due to rounding presentation, the total percentage does not sum to 100%.

## B. Method of Allocation to Ronkonkoma

Based on the source documents reviewed, I allocated expenditures under the Power Purchase Agreement to Ronkonkoma using one of the following methodologies unless otherwise noted:

### 1. Direct costs

Invoices and other source documents that identify the expenditure as having been made solely for Ronkonkoma are assigned 100% to Ronkonkoma.

### 2. Allocation of Costs

Where source documents for expenditures under the Power Purchase Agreement do not correlate the project site with the expenditure, three methodologies were used to allocate costs as follows:

- a. Allocation Method 1 – Based on Projected Wattage Output of Solar Modules Purchased. Each of the seven project sites under the Power Purchase Agreement was expected to generate a certain amount of wattage annually. The total expected annual wattage for all seven sites combined was 19,133,280 watts. The total expected annual wattage for Ronkonkoma was 6,314,000 watts. This information is presented in further detail on **Schedule I-2**. However, EDF only purchased solar modules sufficient to generate 17,540,460 watts of power.

Construction of six of the seven projected sites was completed using solar modules sufficient to generate 12,819,280 watts of power. Therefore, only the wattage output capable of being produced by the remaining solar modules ( $17,540,460 - 12,819,280 = 4,721,180$ ) is allocable to Ronkonkoma. This wattage output is sufficient to generate 26.92% of the total output under the Power Purchase Agreement ( $4,721,180 \div 17,540,460 = 26.92\%$ ). This information is presented in further detail on **Schedule I** and Allocation Method 1 is implemented in the calculation of Solar Module Storage Costs detailed on **Schedule E**.

- b. Allocation Method 2 – Based on Percentage of Steel Inventory. EDF purchased steel for use at each of the seven sites. EDF purchased more steel than was ultimately required for the construction of all seven sites. EDF sold all of the unused steel in its inventory that was purchased in connection with the Power Purchase Agreement to Meridian Steel on March 20, 2013.<sup>8</sup> Prior to this sale, EDF incurred costs to store this steel. Accordingly, only a portion of the storage costs for the steel prior to the sale and a portion of the steel sold to Meridian were to be used for Ronkonkoma.

In this method, I first determined the dollar value of steel needed for each of the seven sites. Ronkonkoma required steel which cost \$2,273,040. This calculation is presented on **Schedule C-1**. The amount of excess steel EDF purchased for all seven sites had a cost of \$2,137,043. Thus, the total cost for steel sold by EDF was \$4,410,083 ( $\$2,273,040 + \$2,137,043 = \$4,410,083$ ). Therefore, costs for the storage and receipts from the sale of the sold steel should be allocated 51.54% to Ronkonkoma ( $\$2,273,040 \div \$4,410,083 = 51.54\%$ ). Allocation Method 2 is implemented in the calculation of EDF's efforts to mitigate by selling its steel inventory on **Schedule C-2** and the calculation of EDF's costs incurred for storing steel prior to the sale on **Schedule F**.

- c. Allocation Method 3 – Based on Total Project Sites. EDF incurred additional categories of out-of-pocket costs to develop each project site under the Power Purchase Agreement. These additional categories are listed as numbers 6 through 12 in the tables above and presented in summary on **Schedules G and H**. The supporting documents for those costs do not correlate the costs to specific project sites. Although the Ronkonkoma site represented 33% of the planned power output for the seven project sites under the Power Purchase Agreement, I only allocated one-seventh (1/7) of these costs to Ronkonkoma. This methodology is more conservative than allocating the costs based on Ronkonkoma's projected power output as a percentage of the overall project.

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<sup>8</sup> A copy of the related sale agreements are attached hereto as **Exhibit 16 and 17**.

## C. Calculation of Costs to Ronkonkoma

### 1. Solar Modules (Schedules B, B-1, and I)

Through my analysis of all invoices provided, I determined that 62,538 solar modules were purchased in connection with the Power Purchase Agreement. These modules were sufficient to generate 17,540,460 watts of power and cost a total of \$27,609,721. Generally, the cost of a solar module is determined by the number of watts of power the solar module will generate.<sup>9</sup> As detailed in **Schedule B-1**, the cost of each solar module purchase varied slightly. I calculated the average price per watt of power as \$1.57 ( $\$27,609,721 \div 17,540,460 = \$1.57$ ).<sup>10</sup>

The project site designs for six of the seven sites detailed the expected wattage to be produced by each site.<sup>11</sup> As detailed in **Schedule I**, I calculated the total wattage generated by the six completed sites as 12,819,280. As stated above, EDF purchased solar modules capable of generating 17,540,460 watts of power and construction of six of the sites in the Power Purchase Agreement was completed. The total wattage generated by the six completed sites was subtracted from the total wattage generated by purchased solar modules to determine that remaining inventory was sufficient to generate 4,721,180 watts of power ( $17,540,460 - 12,819,280 = 4,721,180$ ).

On **Schedule B**, I multiplied the wattage that was capable of being generated by the remaining inventory by the average price per watt described above to determine that the cost of the remaining inventory was **\$7,431,416**.

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<sup>9</sup> EDF verified that price per watt is a convention used in the purchase of solar modules.

<sup>10</sup> \$1.57 is a rounded value.

<sup>11</sup> Copies of the project site designs for the Ronkonkoma, Cohalan, Deer Park, Dennison, Riverhead and North County sites are attached hereto as **Exhibit 5 - 10**. The project site design for Brentwood was not provided to me. I relied upon the commercial operation notification letter for the Brentwood site dated November 22, 2011 to verify the expected wattage output for this site. A copy of this letter is attached hereto as **Exhibit 11**.

## 2. Foundations: Array Foundations (Schedule C)

The site design included in the construction contract for Ronkonkoma indicated that the total wattage output for Ronkonkoma would be 7,521,360 watts (**Exhibit 12**). Therefore, EDF purchased sufficient steel to support solar modules needed to generate 7,521,360 watts of power. This steel cost \$2,706,070 based on the invoice from Baja Construction (included herein as **Exhibit 13**).

The final expected power output for the Ronkonkoma site was 6,314,000 watts. To determine the total steel that was to be used for the Ronkonkoma site, I calculated the price per watt of the original steel purchase and applied that price to the ultimate expected power output. I utilized the expected power output (6,314,000 watts) because the steel was purchased prior to the breach based on EDF's expectation that the project would be completed as planned. This calculation is detailed on **Schedule C** and is summarized below:

| Description                                     | Amount      | Ref.            |
|---|-------------|-----------------|
| Contracted Steel Material Cost for Ronkonkoma   | \$2,706,070 | (a)             |
| Contracted Steel Watts for Ronkonkoma           | 7,521,360   | (b)             |
| Contracted Cost per Watt                        | \$0.36      | (c) = (a) / (b) |
| Actual Site Design Watts for Ronkonkoma         | 6,314,000   | (d)             |
| Actual Site Design Material Cost for Ronkonkoma | \$2,273,040 | (c) * (d)       |

## 3. Project Costs Related to Ronkonkoma Carport Structures (Schedule D)

This expense was detailed on an invoice from Baja Construction and includes only the down payment for construction costs of the carport structures at the Ronkonkoma site. A copy of the invoice for **\$451,012** is included herein as **Exhibit 14**.

#### 4. Storage of Solar Modules (Schedule E)

Subsequent to the alleged breach of the Ronkonkoma Lease, EDF incurred costs to store the solar modules that were planned to be installed at the Ronkonkoma site.<sup>12</sup> These costs continued to accrue until September 13, 2012 when EDF transferred the remaining solar panels purchased for the Power Purchase Agreement to another EDF project. The total storage costs incurred during this time period was \$95,931 as indicated in Seagis Property Group invoices.

I utilized Allocation Method 1 (described above in this Section) to determine the portion of this cost allocable to Ronkonkoma because the invoices did not identify the specific solar modules stored during this period. As the solar modules purchased for Ronkonkoma would have generated 26.92% of the total power in connection with the Power Purchase Agreement, I allocated 26.92% of the storage cost to Ronkonkoma. This allocation totals **\$25,825** and is presented in detail on **Schedule E**.

#### 5. Steel Storage Costs (Schedule F)

Subsequent to the alleged breach of the Ronkonkoma Lease, EDF incurred costs to store steel to be used for the construction of array foundations to hold solar modules that were planned to be installed at the Ronkonkoma site.<sup>13</sup> These costs continued to accrue until March 20, 2013 when EDF sold the remaining steel purchased for the Power Purchase Agreement to Meridian Steel. The total storage costs incurred during this time period was \$7,090 as indicated in Baja Construction invoices.

I utilized Allocation Method 2 (described above in this Section) to determine the portion of this cost allocable to Ronkonkoma because the storage invoices did not specifically identify the steel stored during this period. As Ronkonkoma was

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<sup>12</sup> EDF also incurred solar module storage costs during the completion of the six other sites. These costs are not included in this calculation of damages.

<sup>13</sup> EDF also incurred steel storage costs during the completion of the six other sites. These costs are not included in this calculation of damages.



projected to use 51.54% of the steel remaining in inventory at the time of the alleged breach, I allocated 51.54% of the storage cost to Ronkonkoma. The allocated cost totals **\$3,654** and is presented in detail on **Schedule F**.

6. Other Costs (Schedules G and H)

The remaining out-of-pocket costs EDF incurred in connection with Ronkonkoma can be classified as either direct costs or allocable costs. The discussion below includes six categories of costs that are distinguishable from the costs discussed above.

The supporting invoices for these costs provided sufficient detail to identify the costs as being solely for Ronkonkoma for only two of these categories. Those disbursements are classified as “direct” costs and are summarized below and on **Schedule G** and presented in detail in **Schedules G-1** and **G-2**.

For the remainder of these other costs, the supporting invoices provided sufficient information to identify the disbursements as part of the Power Purchase Agreement but did not allow for specific identification to Ronkonkoma. A portion of other costs were allocated to Ronkonkoma using Allocation Method 3. Ronkonkoma was one of seven sites to be completed under the Power Purchase Agreement and the costs were allocated one-seventh (1/7) to Ronkonkoma. Those disbursements are classified as “allocable” costs and are summarized below and on **Schedule H** and presented in detail in **Schedules H-1 through H-7**.

a. Other Direct Out of Pocket Costs for Ronkonkoma (Schedule G)

|   | Cost Category                     | Amount           |
|---|-----------------------------------|------------------|
| 1 | Design & Engineering: Development | \$137,900        |
| 2 | Lease Pre-Payment                 | 37,151           |
|   | <b>Total</b>                      | <b>\$175,051</b> |

b. Other Out of Pocket Costs Allocable to Ronkonkoma (Schedule H)

|   | Cost Category                                    | Amount           |
|---|--|------------------|
| 1 | Design & Engineering: Development <sup>14</sup>  | \$43,252         |
| 2 | Design & Engineering: Development* <sup>15</sup> | 60,790           |
| 3 | Legal: Project Development                       | 53,381           |
| 4 | Consulting: Geotechnical Reporting               | 48,408           |
| 5 | Consulting: Development Permitting               | 21,472           |
| 6 | Legal Fees                                       | 3,193            |
|   | <b>Total</b>                                     | <b>\$230,496</b> |

VIII. EDF MITIGATED \$1,077,787 OF NET ECONOMIC DAMAGES SUBSEQUENT TO THE ALLEGED BREACH

By June 15, 2012, Suffolk County had not issued a building permit for Ronkonkoma and had not provided an adequate substitute site for Ronkonkoma so that EDF would be able to complete the installation of the solar carports by the deadline under the Power Purchase Agreement with LIPA. On September 13, 2012, EDF transferred a portion of the remaining solar modules from the Power Purchase Agreement to a different EDF project. A copy of the agreement is included herein at **Exhibit 15**. As discussed above, the average price paid per watt by EDF for solar modules under the Power Purchase Agreement was \$1.57. As presented in detail on **Schedule B-2** and described below, Suntech America, Inc. provided a term sheet for the sale of solar modules to EDF for \$0.65 per watt dated November 2, 2012, which was used as the sale price of the transferred solar modules.

In March 2013, EDF sold all of the steel in its inventory to Meridian Steel. This included steel that was intended for Ronkonkoma as well as excess steel EDF purchased for all sites

<sup>14</sup> The difference between these costs, and the costs listed on **Schedule G** as "Other Direct Out-of-Pocket Costs for Ronkonkoma" is that the invoices for these costs do not specifically identify the costs as having been incurred solely in connection with the Ronkonkoma location. Accordingly, this amount represents one-seventh (1/7) of the total costs listed on the invoices. See **Schedule H-1** for further detail.

<sup>15</sup> The difference between these costs, and the costs listed on line 1 above is that the invoices for these costs do not specifically identify the costs as having been incurred solely in connection with the Ronkonkoma location. However, the invoices detailing these costs do specifically identify the costs as having been incurred in connection with five (5) of the seven (7) sites listed in the Power purchase Agreement (Ronkonkoma, Cohalan, Dennison, Riverhead, and North County). Accordingly, this amount represents one-fifth (1/5) of the total costs listed on the invoices. See **Schedule H-2** for further detail.

in the Power Purchase Agreement (as detailed on **Schedule C-1**). As presented in detail on **Schedule C-2** and described below, EDF incurred a loss on the sale of its steel inventory to Meridian Steel.

**A. EDF's transfer of solar panels purchased for Ronkonkoma to another project resulted in \$588,179 of mitigated damages.**

As shown on **Schedules B** and **B-1**, EDF had solar modules on-hand capable of generating 4,721,180 watts of power at the time of the alleged breach. On September 13, 2012, EDF transferred solar modules capable of generating 904,890 watts of power to a separate internal project. The market price near the date of the transfer was for \$0.65 per watt, based on a term sheet from Suntech America, Inc. dated November 2, 2012. This equates to a market price of \$588,179 as shown on **Schedule B-2**. As discussed in more detail below, solar modules capable of generating 3,816,290 watts of power currently remain in EDF's inventory ( $4,721,180 - 904,890 = 3,816,290$ ). I identified the 3,192 solar modules (capable of generating 904,890 watts of power) as purchased by EDF in connection with the Power Purchase Agreement by matching the serial numbers of the solar modules purchased to those sold to Pukana Solar, LLC. This information is presented in detail on **Schedule B-3**.

**B. EDF's sale of steel purchased to construct carports in Ronkonkoma resulted in \$489,608 of mitigated damages.**

As shown on **Schedule C**, EDF purchased steel for the Ronkonkoma location that was capable of supporting solar modules generating 7,521,360 watts of power. This was more steel than was ultimately needed for the Ronkonkoma site as the actual site design for Ronkonkoma only required steel sufficient to support solar modules that would generate 6,314,000 watts of power. The amount of steel needed for Ronkonkoma's actual site design cost \$2,273,040. **Schedule C-1** calculates the cost of excess steel EDF purchased for all seven sites included in the Power Purchase Agreement (\$2,137,043). At the time of the alleged breach, EDF had both the steel required for the Ronkonkoma site and the excess steel on hand. The total cost of this steel was \$4,410,083.

On March 20, 2013, EDF entered into an agreement with Meridian Steel wherein Meridian Steel agreed to buy EDF's entire steel inventory.<sup>16</sup> A copy of that agreement is included herein as **Exhibit 16 and 17**. The total received by EDF for the sale of steel was \$949,958.<sup>17</sup> These proceeds included amounts received for both the steel required for the Ronkonkoma site and the excess steel EDF purchased for all sites under the Power Purchase Agreement. Only the sale of steel that was to be used for the Ronkonkoma site constitutes an off-set to EDF's claim. On **Schedule C-2**, I applied Allocation Method 2 to calculate that \$489,608 of these sale proceeds are attributable to steel purchased for Ronkonkoma as follows:

|   |                  |
|---|------------------|
| Total Proceeds from Sale of Steel                                 | \$949,958        |
| Percentage of Ronkonkoma Steel in Inventory (Allocation Method 2) | 51.54%           |
| Ronkonkoma Allocation (Mitigation)                                | <u>\$489,608</u> |

**IX. PREJUDGMENT INTEREST ON EDF'S UNMITIGATED NET ECONOMIC DAMAGES FOR RONKONKOMA TOTALS \$2,144,244**

Counsel for EDF requested that I calculate prejudgment interest on EDF's out of pocket expenses caused by Suffolk County's alleged breach of the Ronkonkoma Lease under the assumption that an award of prejudgment interest is appropriate in this matter. I was further instructed by EDF's Counsel to calculate interest at a rate of 9% per annum using a simple interest protocol. All prejudgment interest calculations discussed in this report, and presented on the schedules attached hereto, use a 9% annual rate and a simple interest protocol.

**A. Prejudgment Interest on Solar Modules is \$1,578,829**

Prejudgment interest calculated on EDF's expenses pertaining to the installation of solar modules at the Ronkonkoma location is calculated in three distinct steps as presented in detail on **Schedule B-4** and summarized below:

<sup>16</sup> At the time of this agreement, all steel in EDF's inventory was purchased in connection with the Power Purchase Agreement.

<sup>17</sup> See Invoice from EDF Renewable Energy to Meridian Steel dated March 25, 2013 included herein as **Exhibit 18**.

1. *Interest from June 15, 2012 to time of sale - \$163,305*

By June 15, 2012, Suffolk County had not issued a building permit for Ronkonkoma and had not provided an adequate substitute site for Ronkonkoma so that EDF would be able to complete the installation of the solar carports by the deadline under the Power Purchase Agreement with LIPA. This date is used as a starting point because EDF had no expectation of using the remaining solar modules for the Power Purchase Agreement after this date. On June 15, 2012, EDF had solar modules on-hand that they purchased for Ronkonkoma with a cost of \$7,431,416. Interest on this amount through September 12, 2012, the day before a portion of the solar modules were sold, is \$163,305.

2. *Interest on losses incurred by the partial sale of solar modules calculated through December 31, 2014 - \$172,962*

On September 13, 2012, EDF sold solar modules capable of generating 904,890 watts of energy to Pukana Solar, LLC. As presented on **Schedule B-1**, these solar modules had an average cost of \$1.57 per watt – total cost of \$1,424,350.<sup>18</sup> The sale price for the Pukana Solar, LLC project was \$0.65 per watt – total sale proceeds of \$588,179.<sup>19</sup> Therefore, EDF incurred an \$836,171 loss on the sale.<sup>20</sup> Interest on the loss from the sale calculated from September 13, 2012 (date of sale) through December 31, 2014 is \$172,962.

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<sup>18</sup> 904,890 watts \* \$1.57 per watt (rounded) = \$1,424,350

<sup>19</sup> 904,890 watts \* \$0.65 per watt = \$588,179

<sup>20</sup> \$1,424,350 - \$588,179 = \$836,171

3. *Interest on the unsold solar modules from the date of sale through December 31, 2014 - \$1,242,562*

After the sale to Pukana Solar, LLC, EDF's remaining solar module inventory was capable of producing 3,816,290 watts of power.<sup>21</sup> At an average cost of \$1.57 per watt, the value of EDF's solar module following the sale was \$6,007,066.<sup>22</sup> Interest on this amount from September 13, 2012 (date of sale) through December 31, 2014 is \$1,242,562.

**B. Prejudgment Interest on Steel Purchased for Array Foundations is \$441,218**

Prejudgment interest calculated on EDF's costs for steel is calculated in two distinct steps as presented in detail on **Schedule C-3** and summarized below:

1. *Interest from June 15, 2012 to time of sale - \$155,646*

By June 15, 2012, Suffolk County had not issued a building permit for Ronkonkoma and had not provided an adequate substitute site for Ronkonkoma so that EDF would be able to complete the installation of the solar carports by the deadline under the Power Purchase Agreement with LIPA. On June 15, 2012, EDF had steel on-hand they purchased for Ronkonkoma with a cost of \$2,273,040.<sup>23</sup> Interest on this amount through March 19, 2013, the day before all of EDF's steel was sold, is \$155,646.

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<sup>21</sup> 4,721,180 watts - 904,890 watts = 3,816,290 watts.

<sup>22</sup> 3,816,290 watts \* \$1.57 per watt (*rounded*) = \$6,007,066

<sup>23</sup> See **Schedule C** for the calculation of steel purchased for Ronkonkoma.

2. *Interest on losses incurred by the sale of steel calculated through December 31, 2014*  
 - \$285,572

On March 20, 2013, EDF sold all of its steel to Meridian Steel. As presented on **Schedule C-2**, the sale proceeds allocable to Ronkonkoma were \$489,608. Therefore, EDF incurred a \$1,783,432 loss on the sale.<sup>24</sup> Interest on the loss from the sale calculated from March 20, 2013 (date of sale) through December 31, 2014 is \$285,572.

**C. Prejudgment Interest on All Other Out-of-Pocket Costs is \$124,197**

Prejudgment interest on all other out of pocket costs described in this report was calculated annually at 9% simple interest starting at the later date of either (a) the date the cost was incurred or (b) June 15, 2012. The interest is presented in detail on **Schedules D, E, F, G and H** and is summarized as follows:

|           | <b>Out of Pocket Cost</b>                                 | <b>Interest</b>   | <b>Reference</b>  |
|-----------|---|-------------------|-------------------|
| <b>1</b>  | Project Cost Related to Carport Structures                | \$ 30,985         | <b>Schedule D</b> |
| <b>2</b>  | Storage of Solar Modules                                  | 265               | <b>Schedule E</b> |
| <b>3</b>  | Storage of Steel  | 200               | <b>Schedule F</b> |
| <b>4</b>  | Design & Engineering: Development (Direct)                | 31,565            | <b>Schedule G</b> |
| <b>5</b>  | Lease Pre-Payment   | 8,505             | <b>Schedule G</b> |
| <b>6</b>  | Design & Engineering: Development (All Sites - Allocable) | 9,874             | <b>Schedule H</b> |
| <b>7</b>  | Design & Engineering: Development (5 Sites - Allocable)   | 13,857            | <b>Schedule H</b> |
| <b>8</b>  | Legal: Project Development                                | 12,219            | <b>Schedule H</b> |
| <b>9</b>  | Consulting: Geotechnical Reporting                        | 11,081            | <b>Schedule H</b> |
| <b>10</b> | Consulting: Development Permitting                        | 4,915             | <b>Schedule H</b> |
| <b>11</b> | Transportation of Solar Modules                           | -                 | <b>Schedule H</b> |
| <b>12</b> | Legal Fees  | 731               | <b>Schedule H</b> |
|           | <b>Total</b>  | <b>\$ 124,197</b> |                   |

<sup>24</sup> \$2,273,040 - \$489,608 = \$1,783,432